SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1968

No. 257

EX PARTE, IN THE MATTER OF THE PETITION OF OLIVER LEE YORK AND MARGARET EDNA YORK FOR ADOPTION OF A FEMALE INFANT

Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

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EX PARTE, PETITION OF OLIVER LEE YORK AND MARGARET EDNA YORK FOR ADOPTION OF A FEMALE INFANT

Oliver Lee York,
Margaret Edna York,
Petitioners

Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

Oliver Lee York and Margaret Edna York, Petitioners, respectfully pray that a Writ of Certiorari issue to review the judgment denying a petition for appeal of the United States Court of Appeals for the District of Columbia Circuit entered in this cause April 4, 1968.

OPINION BELOW

The opinion rendered by the United States Court of Appeals for the District of Columbia Circuit was an Order dated April 4, 1968 denying petitioners' petition for the allowance of an appeal of the two questions presented here and is set forth in full in Appendix E herein.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on April 4th, 1968 (Appendix E herein).

The jurisdiction of this Court is invoked under 28 U.S.C., 1254 (1) in that this is an appeal from the final judgment rendered by a United States Court of Appeals in a civil action wherein the petitioners claim that their rights have been violated and they have been denied the due process of law protection guaranteed them by the Constitution of the United States.

QUESTIONS PRESENTED

1. Was due process of law denied to the Petitioners when the trial judge denied the petition for adoption after he had secretly, in advance of hearing, examined the Department of Public Welfare investigative report which recommended denial of the petition for adoption, which report was never submitted into evidence, and refused to permit an oral hearing relative to the report and then refused to permit counsel for petitioners an opportunity to examine said report in order that counsel might effectively determine what charges were made and by whom they were made in order to defend and protect the rights of petitioners, and such erroneous action was not reversed on appeal.

2. Was due process of law denied to the petitioners when the Department of Public Welfare recommended denial of the petition for adoption, refused to grant the necessary consent, and the trial judge did not appoint a guardian *ad litem* to represent the interests of the prospective adoptee, and such erroneous action was not reversed on appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the due process protections guaranteed petitioners by the fifth and the fourteenth amendments to the Constitution of the United States.

In view of the fact that adoption procedures are regulated by statute, the District of Columbia Code provisions involved in the questions on appeal are numerous. The pertinent provisions are set forth as follows:

> Title 16, Section 311. Sealing and inspection of records and papers. "From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings."

Also, D. C. Code, Title 32, Section 786:

> "(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of

the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedures."

And D. C. Code, Title 32, Section 789:

"The Board of Public Welfare is authorized to make such investigations and inspections as are necessary to carry out the provisions of this chapter."

In addition, the following provisions of Title 16, which specifically set forth the requirements for adoption proceedings:

Title 16, Section 301. Jurisdiction

"(a) Subject to subsection (b) of this section the Domestic Relations Branch of the District of Columbia Court of General Sessions has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any one of the following circumstances exist:

(1 and 2 omitted)

(3) the child to be adopted is in the legal care, custody or control of the Commissioners or a child-placing agency licensed under the laws of the District.

Title 16, Section 304. Consent

"(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, *after a hearing,* that the consent or consents are withheld contrary to the best interests of the child." (emphasis supplied).

Title 16, Section 307. Investigation, report and recommendation

"(a) . . . . upon the filing of a petition the court shall refer the petition for investigation, report and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Board of Commissioners, if the case is not supervised by a licensed child-placing agency.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case."

STATEMENT OF THE CASE

Petitioners, Oliver Lee York and Margaret Edna York, husband and wife, in the month of June, 1966 petitioned the Domestic Relations Branch of the District of Columbia Court of General Sessions for the adoption of a female infant. From the denial of that petition, they have noted the present appeal citing errors committed by the trial judge which they contend effectively deprived them of a reasonable opportunity to defend, enforce and protect their rights and thereby did not satisfy the Constitutional requirements for due process of law.

Between the years 1951 and 1966, the petitioners provided board and care for more than fifty (50) wards of the District of Columbia in return for monetary consideration. In 1951 petitioners adopted one of the first children placed in their home, who is now the seventeen year old son living with petitioners. Normally, the children were placed in petitioners' home for a few months and then removed. In 1960, the prospective adoptee, then a thirty-five day old female infant born out of wedlock, whose mother had relinquished her parental rights to the District of Columbia, was placed in petitioners' home. Because the child was sickly, she was permitted to remain there for six (6) years until 1966.

In 1966, petitioners initiated adoption proceedings and, upon order of the court, the Department of Public Welfare was ordered to verify the allegations of the petition by virtue of a thorough investigation "for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioners is a suitable one for the adoptee" and to "report its finding with recommendation to this Court." (Appendix A)

Pursuant to the ordered investigation, the Department of Welfare submitted its report to the Court, wherein it recommended denial of the petition for adoption. In addition, the Department of Public Welfare surreptitiously removed the prospective adoptee from the custody of the petitioners.

Upon being advised that the child which had been with them for six years was removed from their custody by the Department of Public Welfare, and that the Department would not consent to the adoption by petitioners for reasons set forth in their report to the Court recommending denial of the petition for adoption, petitioners moved the court for an oral hearing on said report.

Pursuant to a Rule to Show Cause (Appendix B), the court held a hearing to determine whether the motion for oral hearing on the report and recommendations of the Department of Public Welfare should be granted and, if not, why the petition for adoption should not be denied. The court ordered the Corporation Counsel to enter an appearance and to represent the Department of Public Welfare, which refused to supply the necessary consent in such hearing. A guardian *ad litem* was not appointed to represent the interests of the prospective adoptee.

Prior to the hearing, the trial judge read the report and recommendations of the Department of Public Welfare and refused to permit petitioners' counsel an opportunity to examine the report. Although the court verbally advised counsel of the generic nature of the disqualifying information contained in the report, counsel was unable to determine either the source or the extent of such information in order to adequately defend the petitioners from such unfounded, unproven allegations and thereby protect their right to preserve their reputation and their right to adopt the female infant.

As a result of the hearing, the trial judge overruled the motion for an oral hearing upon the report and recommendation and denied the petition for adoption by Opinion and Order dated February 17, 1967 (Appendix C). The questions of the right of the trial court to refuse the request for an oral hearing on the disqualifying report and recommendations and the refusal to permit an examination thereof by counsel for petitioners, as well as the failure to appoint a guardian *ad litem* to protect the interests of the prospective adoptee were appealed to the District of Columbia Court of Appeals, which affirmed the action below (Appendix D). Petition for appeal of the same questions to the United States Court of Appeals for the District of Columbia Circuit was denied (Appendix E).

Your petitioners seek the issuance of a writ of certiorari to review the final judgment of the United States Court of Appeals for the District of Columbia Circuit.

HOW FEDERAL QUESTIONS ARE PRESENTED

On petition for appeal to the United States Court of Appeals for the District of Columbia, counsel for the petitioners invited the attention of the court to "the trial judge's departure from accepted and usual course of judicial proceedings" in the court's denial of counsel's request to review that portion of the investigative report which contained disqualifying derogatory information relating to the petitioners. As a result of such denial, counsel for petitioners was required to blindly subpoena and examine witnesses "due to his lack of knowledge as to who was responsible for each adverse allegation. This was clearly a departure from the usual course of judicial proceedings . . . "

In addition, the petition for appeal stated that it was "mandatory for a trial judge to give consideration to the appointment of a guardian *ad litem* for a minor . . . " and that it was reversable error for the trial judge not to have done so. Such an error is so "fundamental in character" that it rendered the judgment voidable, stated counsel for petitioners.

The above claims of error had been made to the District of Columbia Court of Appeals, which failed to reverse the trial court and, petition for appeal to the United States Court of Appeals for the District of Columbia Circuit denied the appeal.

On the basis of the foregoing, the petitioners have been denied the due process of law guaranteed them by the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

1. PETITIONERS, OLIVER LEE YORK AND MARGARET EDNA YORK, WERE DEPRIVED OF DUE PROCESS OF LAW WHEN THE DISTRICT OF COLUMBIA DOMESTIC RELATIONS BRANCH, COURT OF GENERAL SESSIONS TRIAL JUDGE, IN DENYING THE PETITION FOR ADOPTION, IN ADVANCE OF HEARING, WITHOUT SAID REPORT HAVING BEEN SUBMITTED INTO EVIDENCE, SECRETLY EXAMINED THE DEPARTMENT OF PUBLIC WELFARE REPORT WHICH RECOMMENDED DENIAL OF PETITION FOR ADOPTION AND REFUSED PETITIONERS AN ORAL HEARING RELATIVE TO SAID REPORT, AND THEN REFUSED TO PERMIT COUNSEL FOR PETITIONERS AN OPPORTUNITY TO EXAMINE SAID REPORT IN ORDER TO EFFECTIVELY DETERMINE WHAT CHARGES WERE MADE AND BY WHOM THEY WERE MADE, IN ORDER TO PROPERLY DEFEND AND PROTECT THE RIGHTS OF PETITIONERS, AND SUCH ERRONEOUS ACTION WAS NOT REVERSED ON APPEAL BY EITHER THE DISTRICT OF COLUMBIA COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The principle of due process of law is intended to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty or his property. The enjoyment of private reputation unassailed is a right entitled to the protection of the law and of the constitution as much as are the rights to the possession of life, liberty, or property.

The inhibitions of the due process provisions of the Constitution include not only the political but also the judicial departments of the government. *Barrows v. Jackson,* 346 U. S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031, reh. den. 346 U. S. 841, 98 L. Ed. 361, 74 S. Ct. 19. The due process of law clauses of the Federal Constitution are standing guarantees of substantial justice and prevents such arbitrary action as would deny a litigant a substantially fair trial.

The Federal Supreme Court of course normally will not interfere on appeal unless the judgment is in clear conflict with those fundamental principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. If the error is gross and obvious, coming close to the boundary of arbitrary action, there may be a violation of the guaranty of due process. *Corrigan v. Buckley,* 271 U. S. 323, 70 L. Ed. 969, 46 S. Ct. 521; *Jones v. Buffalo Creek Coal & Coke Co.,* 245 U. S. 328, 62 L. Ed. 325, 38 S. Ct. 121.

The record on appeal in this case discloses that the trial court issued a "Rule to Show Cause" directed to both the petitioners and the Department of Public Welfare relative to the petition for adoption, wherein petitioners were ordered to show cause why their petition for adoption "should not be denied", and further to show the Court "what standing, if any, they possess to move for an oral hearing upon the report and recommendations . . . " of the Department of Public Welfare. (See Appendix B)

At the outset, therefore, petitioners were placed in the untenable position of proving to the Court that they were entitled to the basic fundamentals of jurisprudence which guarantee the enjoyment of private reputation unassailed. In view of the undisclosed, derogatory, disqualifying information against the reputation of the petitioners contained in the report and recommendation of denial of petition for adoption, the petitioners, having moved for an oral hearing on the report and recommendations, were entitled to know the contents thereof, by whom the allegations were made and then be presented an opportunity to examine their accusers at a hearing for that purpose. To order petitioners to "show cause" why they should have an oral hearing relative to a right that is so fundamental, is so contrary to our system of

jurisprudence for the protection and enforcement of private rights, that it appears to be an arbitrary action, or so close to the boundary, as to violate the guarantee of due process.

The requirements of due process are not met where the right of hearing is granted only on conditions so harsh and oppressive as to be tantamount to a denial of the right. *Wadley So. R. Co. v. Georgia,* 235 U. S. 651, 59 L. Ed. 405, 35 S. Ct. 214. To order petitioners to "show cause" why an oral hearing should be had on charges against them that they neither knew who had made them nor the exact contents thereof was extremely harsh and oppressive.

A "hearing" is the hearing of evidence and argument, and has reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts and the issue determined uninfluenced by extraneous considerations. By the terms of D. C. Code, Title 16, S. 301 (a), the trial court was charged:

> ". . . with authority to make such rules not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, . . . the petitioner, and any other properly interested party."

It certainly cannot be contended that the denial of the hearing requested by petitioners on the report and recommendations of Public Welfare had the effect of "bringing fully before the court for consideration the interests of . . . the petitioner" or, for that matter, those of the prospective adoptee.

In an attempt to comply with the "Rule to Show Cause" counsel for petitioners requested the opportunity to examine the portion of the "report and recommendation" relating to the petitioners and the request was denied. However, the trial judge verbally advised petitioners'

counsel of the "generic nature of the disqualifying information" (Appendix C, page 5), thereby admitting that he had read the "report" prior to the "hearing" on the Rule to Show Cause.

In Re Blumenthal's adoption, 346 F.2d 783, 3rd Circuit, 1965, is a case exactly on point. McLaughlin, Circuit Judge, wrote:

> "In the same category appears the confidential report of the Welfare Department which the judge examined. This too, should have been subject to examination, to objection, to contradiction. . . . the court should have been alerted to the error of privately reading a document which was not in evidence in this carefully circumscribed proceeding. Obviously, the report may well have had an important bearing on the court's determination."

The refusal by the trial court to permit an inspection of the "report and recommendation" was predicated on the provision of the D. C. Code, Title 16, Section 311:

> "From and after filing of petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected."

The above section makes no provision for private inspection by the court of record, when that portion, such as the withholding of consent, is at issue. Where objection and a motion for hearing has been made, the hearing must be granted in order to "bring fully before the court for consideration the interests of the prospective adoptee, . . . the petitioner, and any other properly interested party."

Uniform Adoption Act, Section 6, provides:

> "Withdrawal of any consent filed in connection with a petition for adoption hereunder, shall not be permitted, except that the court, *after notice and opportunity to be heard is given to the petitioner,* (emphasis supplied) to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent."

Although the Uniform Adoption Act is not applicable to the District of Columbia, it is quoted as an authority on adoption procedures. The withholding of consent by the Department of Public Welfare would be in the same category, and the petitioners were entitled to the requested hearing in the absence of statutory prohibition thereof.

Another authority, 2 AmJur 2d, *Adoption,* Section 39, at page 892, states:

> "In other words, when an approved agency, as the custodial guardian, refuses to file its written consent in an adoption proceeding, the court, *after a hearing on the reasonableness of its action,* (emphasis supplied), may, in the proper exercise of judicial discretion, enter an order dispensing with the necessity of consent."

The very gross and obvious error of the trial court in denying a hearing on the withholding of consent, which was the most vital part of this adoption proceeding, deprived the petitioners of the right to contradict by proof every material fact which bears on the question of the right involved, and the failure to disclose to petitioners

documentary evidence and, even more important, testimony, in order to present an opportunity to show that it was untrue was such a gross error that it deprived the petitioners of the due process of law protection afforded them by the Constitution of the United States. *Greene v. McElroy*, 360 U. S. 474, 3 L. Ed. 2d 1377, 79 S. Ct. 1400; *Beard v. Stahr*, 370 U. S. 41, 8 L. Ed. 2 321, 82 S. Ct. 1105.

Petitioners pray that this Honorable Court reverse the proceedings below and remand this case for a hearing on the adoption petition that is not inconsistent with the rights of due process to which the petitioners are entitled.

2. PETITIONERS, OLIVER LEE YORK AND MARGARET EDNA YORK, WERE DEPRIVED OF DUE PROCESS OF LAW WHEN THE DISTRICT OF COLUMBIA DOMESTIC RELATIONS BRANCH, COURT OF GENERAL SESSIONS, TRIAL JUDGE DID NOT APPOINT A GUARDIAN *AD LITEM* TO REPRESENT THE INTERESTS OF THE PROSPECTIVE ADOPTEE WHEN THE DEPARTMENT OF PUBLIC WELFARE RECOMMENDED DENIAL OF THE PETITION FOR ADOPTION AND REFUSED TO GRANT THE NECESSARY CONSENT, AND SUCH ERRONEOUS ACTION WAS NOT REVERSED ON APPEAL BY EITHER THE DISTRICT OF COLUMBIA COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The role which the Department of Public Welfare is accorded in adoption proceedings is that of an advisory agency. In this case, the Department of Public Welfare chose to withhold its consent to the adoption on the basis of its investigative report. The Court could call upon the Department to justify its recommendations and to support its actions in making the investigation, but it cannot be contended that the Department also represented the prospective adoptee.

When the Department of Welfare made a report which required a subsequent hearing, it was incumbent upon the trial court to appoint a guardian *ad litem* to represent the interests of the prospective adoptee, in order to "bring fully before the court for consideration the interests of the prospective adoptee . . . "

Specifically in point is the case of *Barnes v. Paanaker*, 111 F.2d 193, 72 App. D. C. 39, which held that it was *mandatory* for the Court to protect the interests of the prospective adoptee, and stated:

> "The first section of the Act which confers jurisdiction on the . . . Court over adoption proceedings also clothes the Court 'with authority to make such rules . . . as shall bring fully before the court for consideration the interests of the adoptee, the natural parents, the petitioner, and any other properly interested party'. . . . We are of the opinion that, under these provisions it is mandatory that the . . . Court provide full protection for the interests of the adoptee . . . Neither failure of counsel to raise the point on appeal, nor the fact that no decree of adoption was entered, relieves of this responsibility, for decision on a petition for adoption may properly be made by the . . . Court only after it has brought the interests of the adoptee fully before it."

> "For that full measure of representation and protection envisaged by the act, one legally capable of representing their interests must appear in the proceedings.

> "Nor do we think that the act contemplates that the report of the Board of Public Welfare will, in all cases, satisfy the

> statutory requirements that the interests of the adoptee be fully before the clerk. . . . Moreover, the authority given the . . . Court to make such rules . . . as shall bring fully before the court for consideration the interests of the adoptee . . . recognizes that protection *in addition to* that afforded the adoptee by the Board's report may be required in some cases. We think this is such a case.
>
> "We conclude that no one appeared in the proceedings legally qualified to represent the interests of the prospective adoptee in respect to the existence or non-existence of "extraordinary cause", the effect of adoption on their last interests, and other issues relevant to such proceedings."

Although the code has been revised since the *Barnes* decision, the provisions upon which the court at that time based its opinion remain unchanged.

No consideration or judicial determination was made by the trial court relative to the interests of the prospective adoptee. This gross and obvious failure to bring all concerned interests before the court effectively deprived all parties to the proceeding, petitioners included, of the due process of law protection afforded them by the Constitution of the United States.

Petitioners pray that this Honorable Court reverse the proceedings below and remand this case for a hearing on the petition for adoption that is not inconsistent with the established rights of due process to which petitioners are entitled.

CONCLUSION

The errors committed by the trial court were so arbitrary, gross and obvious that they prevented petitioners from bringing before the court the entire interests of all the parties and did not present petitioners an opportunity to reasonably be apprised of allegations concerning them, who made them and thereby adequately defend their reputation and their right to adopt a female infant, thereby depriving them of the due process of law protection afforded by the Constitution of the United States.

It is respectfully requested that this petition for Writ of Certiorari be granted.

Respectfully submitted,

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